

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1954 of 2018**

- A B I S Hatchery Private Limited Registered Office Village- Indamara, Post- Pendri, Tehsil And District- Rajnandgaon, Chhattisgarh. Throught- Marketing Manager, Amit Sharma S/o M.L.Sharma, About 35 Years, R/o House No.-202, Hariom Nagar, Ward No. 19, Tehsil And District- Rajnandgaon, Chhattisgarh. Pin- 491441, District : Rajnandgaon, Chhattisgarh

---- **Petitioner****Versus**

- Mohammad Rafiq S/o Abdul Gaffar Aged About 42 Years Proprietor- Raza Daily Needs, Shitalapara, City, Tehsil And District- Kanker, Chhattisgarh. Pin- 497334, District : Kanker, Chhattisgarh

---- **Respondent**

 For the petitioner : Shri Ganesh Ram Barman, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****22.10.2018.**

1. Heard on application for leave to appeal under Section 378(4) of CrPC.
2. On due consideration, leave to appeal is granted.
3. This appeal has been preferred against Order dated 13.7.2018 passed by Judicial Magistrate First Class, Rajnandgaon (CG) in Criminal Case No.2438/2015 under Section 138 of the Negotiable Instruments Act, 1881 wherein the said Court dismissed the complaint for want of prosecution.
4. Complaint case was filed on 04.8.2018 before the trial Court and it was registered on 25.8.2015. Thereafter it was fixed for appearance of the respondent on various dates up to 13.7.2018. From the record of the trial Court it is not clear whether the warrant of arrest against the respondent was served or not or its

service is awaited. When the respondent is yet to appear before the trial Court, dismissal of the complaint was not the only option before the trial Court. As per Section 256(1) CrPC, the trial Court could have adjourn the case to some other day. It is also not clear whether warrant was served to the respondents or its report of service is awaited.

5. In view of this, efforts should be made to hear both the sides before deciding the issues between the parties and the case should be heard on its merits. The case should be sent to the record room only when there is no scope for proceedings with the case. In the present case, when the order sheet is not revealing the service of warrant of arrest, order passed by the trial court is not sustainable and the same deserves to be set aside.

6. The trial Court is directed to make efforts for presence of the respondent as per law and then proceed with the case to decide the issues between the parties.

7. Accordingly, the petition is allowed and the order dated 13.7.2018 passed by the trial Court is hereby set aside. Now the case is remanded back to the trial Court for adjudicating the matter afresh. The trial Court is directed to proceed with the case after appearance of the respondent.

8. The appellant shall appear before the trial Court on 04.12.2018 for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE